

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

November 30, 2009

Charles R. Fulbruge III  
Clerk

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No. 09-10097  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANTONIO GONZALEZ-MOLINA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:08-CR-132-1

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Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Antonio Gonzalez-Molina appeals his sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a). Gonzalez-Molina contends that the district court committed plain error by applying a 16-level increase to his offense level based on its finding that his 2000 Pennsylvania conviction for aggravated assault was a crime of violence under U.S.S.G. § 2L1.2(b)(1)(A)(ii). The Government concedes that neither the law nor the record establishes that

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Gonzalez-Molina's prior conviction was a crime of violence for purposes of the enhancement and that it was plain error to increase Gonzalez-Molina's sentence based on that conviction.

After reviewing the record and the applicable law, we agree that the district court committed plain error by using Gonzalez-Molina's Pennsylvania aggravated-assault conviction to increase his sentence. *See United States v. Fierro-Reyna*, 466 F.3d 324, 327-29 (5th Cir. 2006); *United States v. Alfaro*, 408 F.3d 204, 211 (5th Cir. 2005). Accordingly, we vacate Gonzalez-Molina's sentence and remand for resentencing. *See Alfaro*, 408 F.3d at 211.

CONVICTION AFFIRMED; SENTENCE VACATED; CASE REMANDED